

APR - 7 2004

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

Federal Communications Commission  
Office of the Secretary

In the Matter of )  
 )  
Petition of WorldCom, Inc. ) File No. CGB-  
 )  
Petition for Declaratory Ruling that West )  
Virginia's Definition of Customer of Record )  
Is Inconsistent with the FCC's Rules )

cc Docket No.  
94-129

**PETITION OF WORLDCOM, INC.**

WorldCom, Inc. ("MCI") hereby requests that the Commission preempt West Virginia's verification requirements that are more stringent than, and are in conflict with, this Commission's own verification requirements.<sup>1</sup> Specifically, West Virginia's rule 15 CSR 6, 2.8(b) conflicts with this Commission's policies and rules concerning verification of primary interexchange carrier (PIC) changes. Rule 15 CSR 6, 2.8(b) provides that only the "customer of record" can verify carrier changes, versus the "subscriber" as more broadly defined by the FCC. While rule 15 CSR 6, 2.8(b) is intended only to apply to intrastate PIC changes, interstate PIC changes are impacted because intrastate and interstate PIC changes are often affected at the same time. Preemption of West Virginia's rule would bring the state's verification requirements in line with this Commission's rules, goals and policies.

No. of Copies rec'd 2  
List A B C D E

<sup>1</sup> 47 C.F.R. § 1.41. The Commission adopted its verification rules, including its definition of subscriber, pursuant to 47 U.S.C. 258(a), which authorizes *this Commission* to prescribe verification procedures.

### Background

Rule 15 CSR 6, 2.8(b) provides in pertinent part that:

In order for a telecommunications carrier to obtain subscriber confirmation of a request for a change in local exchange telephone service or change of presubscribed interexchange carrier (PIC) providing intrastate toll service, a telecommunication carrier must, from the customer of record, perform one of the following:..." 15 CSR 6, 2.8(b).

In contrast, the Commission's rules require authorization and verification from the "subscriber," 47 CFR 64.1120(a)(1), (c). The Commission broadly defines "subscriber" in to include:

"(1) The party identified in the account records of a common carrier as responsible for payment of the telephone bill; (2) Any ~~adult person~~ authorized by such party to change telecommunications services or charge services to the account; or (3) Any person ~~contractually~~ or otherwise lawfully authorized to represent such party." 47 C.F.R. § 64.1100(h).

MCI discussed this inconsistency informally with the staff of the West Virginia Public Service Commission. As a result of this discussion, Staff requested that MCI change its TPV scripting to eliminate the question "[a]re you authorized by the party of record?" This change results in MCI terminating the verification process and canceling the sale if the consumer answers "no" to the question "[a]re you the party of record on the account?"

This change has had a major impact on long distance consumers, as well as MCI long distance sales, in the state of West Virginia. Approximately half of the cancellations for the month of February were due to the state's requirement that the customer of record verify the sale. Specifically, consumers were denied their request to change carriers 663 times in the month of February alone as a result of this requirement. A sampling of the data indicates the majority of the sales that were cancelled were for a combination of

interstate and intrastate or interstate, intrastate and local services. Predictably consumers typically change their interstate and intrastate PICs to MCI at the same time. Moreover, MCI is currently marketing the Neighborhood, an all-distance telecommunications product that combines a special feature package and unlimited local and long distance calling for one price.

### Argument

West Virginia's rule conflicts with this Commission's stated policies and rules in that Rule 15 CSR 6, 2.8(b) does not permit the customer of record to authorize other parties to make the telecommunications-related decisions. This obstructs the express federal objective of giving the customer of record control over who had such authority. Instead, West Virginia substitutes its view of who should have such authority. The Commission could not have anticipated that the states would place themselves in the position of deciding which members of households can authorize changes in their telephone service.

MCI previously requested, in a Petition for Reconsideration, that the Commission clarify that states must use the Commission's definition of subscriber when determining whether a change was properly authorized. At that time, the Commission declined to limit the states' ability to impose more stringent verification requirements than those promulgated by this Commission.<sup>2</sup> Instead, the Commission declared that "in the areas in which the states have jurisdiction, federal verification procedures constitute a floor, and

---

<sup>2</sup> Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, Third Order on Reconsideration, CC Docket No. 94-129, 18 FCC Rcd. 5099, 5140, ¶ 106 (2003) (Third Order on Recon).

states may choose to impose more stringent requirements, so long as they are *consistent* with the federal requirements."<sup>3</sup>

While the Commission denied MCI's initial request for uniform definitions of "subscriber," it did not foreclose the possibility that preemption would be appropriate in the future. A key factor in the Commission's conclusion was that it viewed MCI's request as premature, in a sense, because MCI was unable to present a particular state law that was inconsistent with this Commission's rules and policies. In fact, the Commission declared that "WorldCom does not identify a specific state law or laws that it would seek to have preempted, nor does it describe how the particular law(s) conflicts federal law or obstructs federal objectives."<sup>4</sup> MCI hereby presents a state law that is ripe for preemption – West Virginia Rule 15 CSR 6, 2.8(b) - because it is patently inconsistent with federal requirements and policy objectives.

The Commission's intent to establish a definition of "subscriber" that allowed persons other than the individual whose name appears on the invoice to make account changes is apparent from its rulings on the issue. It is evident in the Third Report and Order, which established the definition of "subscriber," that the Commission's definition was an adherence to particular federal objectives. Specifically, in adopting its definition of "subscriber" the Commission believed that the definition chosen would "serve [the FCC's] public interest goals of <sup>(1)</sup> promoting consumer protection, consumer convenience, and competition in telecommunications services." The Commission expressly declared that "this definition will allow customers of record to authorize additional persons to

---

<sup>3</sup> Id.

<sup>4</sup> Id.

make telecommunications decisions, while protecting consumers by giving the customers of record control over who is authorized to make such decisions on their behalf."<sup>5</sup>

Consumer control was an important objective of the Commission. In developing its definition of "subscriber" the Commission sought comment on proposed definitions that took into consideration "which members of a household are permitted to make changes to telecommunications service" and definitions that "would promote consumer convenience and competition by allowing the party responsible for payment of the telephone bill (*i.e.*, the customer of record) to authorize additional persons to make telecommunications decisions."<sup>6</sup> The Commission rejected proposals that "subscriber" be defined to include any adult household member because "such definition would remove control from customers of record by presumptively authorizing household members and excluding non-household members from making telecommunications decisions."<sup>7</sup> The definition ultimately adopted by the Commission was chosen "because it clearly identifies the customer of record as the source of authority over who is authorized to make telecommunications decisions."<sup>8</sup>

The Commission's stated goal of allowing authorized persons to effectuate PIC changes is clearly obstructed by the West Virginia rule. Because many PIC changes involve a combination of intrastate and interstate services, as a practical matter, West Virginia (or any other state for that matter) cannot have an inconsistent rule on the

---

<sup>5</sup> Id., ¶ 48.

<sup>6</sup> Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, Third Report and Order and Second Order on Reconsideration, CC Docket No. 94-129, 15 FCC Rcd. 15,996, 16018-9, ¶ 46 (2000) (Third Report and Order).

<sup>7</sup> Third Order on Reconsideration, ¶ 50, n. 151.

<sup>8</sup> Id., ¶ 49.

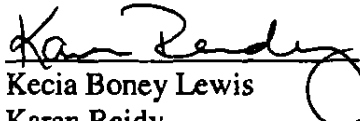
customer of record issue. While West Virginia's rule, as crafted, only refers to local and local toll PICs, the effect is that interstate PIC changes are heavily impacted as well. For the most part, PIC changes for local and local toll service are typically confirmed at the same time as PIC changes for interstate service. As a result, West Virginia's rule, in effect, impacts interstate PICs and is therefore inconsistent with the federal rules.

Conclusion

For the foregoing reasons, MCI respectfully requests that this Commission preempt West Virginia's Rule 15 CSR 6. 2.8(b) because it is inconsistent with the Commission's important policy objectives.

Respectfully submitted,

WORLDCOM, INC.

  
Kecia Boney Lewis  
Karen Reidy  
1133 19<sup>th</sup> Street, NW  
Washington, D.C. 20036  
(202) 736-6270

Dated: March 12, 2004